Court below but also dismissed the claim of the A.T.K.P.L.S.P. firm against the K.S.R.M. firm;

(2) that the restitution decree of the 10th of July, 1933, which was consequential on the Appeal Court's decree of the 11th of May, 1933, was merely an order made as of course, and must therefore be regarded as relating back to the earlier decree which really determined the rights and liabilities of the parties with respect to the Rs. 20,000 obtained by the A.T.K.P.L.S.P. firm on the 2nd of December 1931;

(3) that the decree of the 10th of July, 1933, must be regarded as nothing but an order for execution of the earlier Appeal Court decree; and

(4) that where execution of a decree can only issue on obtaining an order for its execution, that order does not constitute a new judgment debt so as to make a statutory period of limitation begin to run afresh.

It will be seen from these summaries that there is much to be said for either point of view, and I cannot say that I have been able to obtain substantial degree of comfort or guidance from the numerous authorities which were cited to me by learned counsel. Unfortunately apart from the conflicting Indian decisions, there does not appear to be any decided case directly in point. It seems to me, therefore, that I must fall back upon my own resources and decide this difficult point of law upon my own view of the arguments placed before me by learned counsel. I need hardly say that I recognise the probability of other judicial minds taking a different view.

Now to my mind Mr. Raghavan's arguments should prevail, and my reasons for thinking so are as follows:—

1. The Rangoon Appeal Court decree of the 11th of May, 1933, contains no mention of any sum of money nor does it grant any specific monetary relief. Therefore no suit could be brought upon it, and it only, in these Settlements.

2. The restitution decree of the 10th of July, 1933, is undoubtedly a decree for a definite sum of money, and it is final and conclusive between the parties in regard to their rights and liabilities with respect to the Rs. 20,000 obtained by the A.T.K.P.L.S.P. firm from the K.S.R.M. firm on the 2nd of December 1931. Therefore, unless it must be regarded as relating back to the Court of Appeal Decree of the 11th of May, 1933, it affords a sound basis for this action.

3. The restitution decree of the 10th of July, 1933, is the separate decree of a different Court, and it is therefore rather difficult to see how it can relate back to the Appeal Court decree of the 11th of May, 1933, especially as the latter Court could not, and did not, make any order for restitution.

4. The Rangoon High Court has made an order giving leave to execute the restitution decree of the 10th of July, 1933, against the defendant A.T.K.P.L.S.P. Supramanian Chettiar as the sole proprietor of the A.T.K.P.L.S.P. firm. Unless there can be an execution upon an execution, so to speak, it would seem that the Rangoon High Court was treating the restitution decree as one capable in itself of being executed.

5. Broadly speaking a decree can only be executed in so far as it grants any relief, and the Rangoon Appeal Court decree of the 11th of May, 1933, only dismissed the A.T.K.P.L.S.P. firm's claim as against the K.S.R.M. firm. It granted the K.S.R.M. firm no positive relief, and there is no order in that decree, apart from the order as to costs, which is capable of execution. I am therefore inclined to think that the Court of first instance, when it made the restitution decree of the 10th of July, 1933, was not ordering execution of the Appeal Court's decree, but was passing a separate though supplementary decree which may itself be executed.

In the result I have come to the conclusion that judgment must be entered for the K.S.R.M. firm, who are the plaintiffs in this action, against the A.T.K.P.L.S.P. Supramanian Chettiar, who is the defendant, in the amount claimed with interest on the dollar equivalent of Rs. 20,000 from the 6th of July, 1939, until to-day's date. Costs must follow the event, but I do not doubt that the defendant will test the correctness of this decision in the Court of Appeal where, but for the rules, it might very well have been heard and decided in the first instance.

Order accordingly.

Solicitors for plaintiffs:—*Raghavan & Co.*

Solicitors for defendant:—*Hogan, Adams & Allan.*

[ORIGINAL CIVIL JURISDICTION]

AITKEN, J.

November 27, 1939.

S. M. ISAHAK v. REX.

[PENANG CRIMINAL APPEAL No. 16 of 1939]

Bankruptcy Ordinance, s. 107, sub-s. 1—Criminal Procedure Code, s. 124.

A statement made by a bankrupt to an Assistant Official Assignee is not analogous to a statement made to a police officer investigating a criminal offence and it is admissible in evidence against a bankrupt on any charge read against him under s. 107, sub-s. 1 of the Bankruptcy Ordinance.

Case referred to:—

(1) *Rex v. Leinster* [1924] 1 K.B. 311.

MAGISTRATE'S APPEAL.

T. E. Conaghan for appellant.

C. O. Lim for Crown Counsel for the Crown.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Aitken, J.—The appellant was charged before the District Judge at Penang on the 21st of August, 1939, with having, whilst an undischarged debtor, obtained credit to the extent of $100 from one Che Nap binti Johari by buying from her, on credit, and for $100, a gold neck chain and pendant without disclosing to her that he was an undischarged debtor. The charge is laid under s. 107, sub-s. 1 (m) of the Bankruptcy Ordinance, and the time of commission of the alleged offence is said to have been "on or about the 8th of March 1939." The appellant claimed trial.

On the 2nd of September, 1939, the trial took place, and the appellant was convicted and sentenced to seven weeks simple imprisonment. He has appealed to me against both conviction and sentence.

So far as this appeal is an appeal against conviction, it seems to me to be absolutely hopeless. Section 107, sub-s. 1 (m) of the Bankruptcy Ordinance imposes an absolute obligation upon all undischarged bankrupts, and those against whom Wage-earners administration orders have been made and remain in force, to give the correct information about their position to anyone from whom they seek to obtain credit to the extent of $100 or upwards:—see *Rex v. Duke of Leinster*[1]. A *prima facie* case was made out against the appellant, quite apart from the evidence given by the Assistant Official Assignee of a statement made by the appellant to him in his official capacity and in answer to a question put in such capacity; and the appellant elected to give evidence in his own defence. In the course of that evidence he admitted that he had not told Che Nap binte Johari about his being in the position of an undischarged bankrupt before he obtained the gold neck chain and pendant from her on credit. Also, he agreed that the credit given to him amounted to $100.

It is therefore not strictly necessary for me to deal with Mr. Conaghan's contention that the appellant's statement to the Assistant Official Assignee was not admissible in evidence against him at the trial. Since, however, Mr. Conaghan's contention raises questions of considerable practical importance and does not appear to have been the subject matter of any prior judicial determination, I have decided to express my opinion on it.

The Assistant Official Assignee came to hear of the appellant's purchase of jewellery on credit from Che Nap owing to the latter obtaining judgment against the appellant in the District Court for the $100 involved. He sent for the appellant and questioned him about the transaction, and the appellant stated, *inter alia*, "I did not tell her I was an undischarged bankrupt, but I think she knew it."

This statement, which was signed by the appellant, was tendered and accepted in evidence at the trial, no objection being raised thereto by the learned counsel who was then appearing for him.

Mr. Conaghan admits that the Assistant Official Assigneee was acting quite properly and lawfully in asking the appellant about his jewellery transaction with Che Nap, but he says that a statement given to the Assistant Official Assignee in such circumstances must be treated as though it were subject to the same prohibition against user in evidence as applies to statements made to a police officer in the course of a police investigation under s. 124 of the Criminal Procedure Code. According to Mr. Conaghan the position of an Assistant Official Assignee inquiring into the conduct and affairs of a bankrupt is analogous to that of a police officer investigating a criminal offence under Chapter XIII of the Criminal Procedure Code, and therefore any statement made by the bankrupt in course of such an investigation is privileged, so to speak, and cannot be used in evidence against him in support of a criminal prosecution.

In my opinion if there is any such analogy as that alleged it is a very faint one, because bankruptcy is not in itself a crime and an Assistant Official Assignee, whilst investigating the affairs and conduct of a bankrupt, is not conducting a criminal investigation. Quite apart from that, however, it seems to me that analogy is a very dangerous and unsatisfactory method of interpreting and extending the provisions of any statute. I myself can see no good reason in law or common sense for extending the meaning of the expression "police officer" in s. 124 of the Criminal Procedure Code so as to include the Official Assignee in bankruptcy and his assistants, and there are several very good reasons for not doing so. It is a curious fact that the expression "police officer" is nowhere defined either in the Criminal Procedure Code or the Police Force Ordinance, but in the latter Ordinance we have definitions of "Inspector General," "Chief Police Officer," "Gazetted Police Officer," "Enrolled Police Officer" "Superior Police Officer" and "Subordinate Police Officer," I suppose the expression "police officer" includes all such officers, none of whom have any special powers or duties in connection with bankruptcy; but I gather from the provisions of Chapter XIII of the Criminal Procedure Code that investigations into criminal offences are seldom conducted by police officers below the rank of Inspector.

For these reasons I hold that Mr. Conaghan's contention about the statement made by the appellant

to the Assistant Official Assignee is untenable and must be rejected.

Appeal dismissed.

Solicitors for appellant—*Wreford & Thornton.*

[ORIGINAL CIVIL JURISDICTION]

MANNING, J.

November 21, 1939.

ABDUL WAHAB BIN ABDUL RAUF AND ANOTHER

v.

HAJI WAHAB BIN HAJI MOHAMED AND ANOTHER.

[MALACCA SUIT No. 159 of 1938]

Trustee selling to himself and another—Breach of trust.

If a trustee for sale of one estate sells part of the estate property to himself and another as trustees of another estate this transaction is usually bound to be under the same suspicion of favouritism as if he were selling to himself personally and any person interested in the trust property is entitled to ask the Court that such conveyance should be set aside as a breach of trust.

TRIAL.

S. C. Goho for plaintiffs.

W. F. Zehnder for defendants.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Manning, J.—One Haji Maimunah binte Haji Abdul Wahab (hereinafter referred to as Maimunah) died on the 19th February 1921. She had made a will on 21st January 1921. She appointed as her executor one Haji Mohamed bin Haji Abdulrahman (hereinafter referred to as Haji Mohamed). He died on March 24th 1938, leaving a will by which he appointed one Haji Wahab bin Haji Mohamed, the 1st defendant in this action, as his executor.

By clause 2 of her will Maimunah devised to her two grandchildren "the house at Klebang Kechil in which I live, together with the land on which this house stands". These two grandchildren are the plaintiffs in this action.

On the 8th December 1919 Haji Mohamed and the 2nd defendant Nyonia binte Ali became trustees of a certain religious trust under the will of one Haji Abdul Raman. As such trustees they bought certain land from Haji Mohamed as executor of the estate of Maimunah. It is in connection with this sale that the first point in this action arises. The plaintiffs ask that this conveyance be set aside. They say it was a case of a trustee himself buying trust property, i.e. Haji Mohamed selling to himself property which he held as executor of Maimunah. They say such a sale is void and that a Court, without even inquiring into the circumstances, will set aside on its being brought to its notice.

Mr. Zehnder, for the defendants, in his final argument contented himself with arguing that the plaintiffs have no right to take proceedings to set aside this sale. The plaintiffs, he says, were merely interested in the house at Klebang Kechil, customary land which could not be devised by will. The conveyance which is sought to be set aside concerns a different piece of land. The only persons interested in this latter land are the other beneficiaries under the will of Maimunah, namely, her two sons, and they have signed a document relieving Haji Mohamed from all liability.

I am unable to agree with this argument of Mr. Zehnder's. The house and land at Klebang Kechil were devised to the plaintiffs. It may be that under the law this was a mere nugatory devise. I do not think this is a point I have to decide in this action. I assume that they were beneficiaries to some extent under the will of Maimunah. As a matter of fact they never received anything under the will; the house and land at Klebang Kechil had been mortgaged and were sold on the instructions of the mortgagee for $10,700. This amount was credited to the estate by Haji Mohamed, but no part of it was paid to the plaintiffs, the assets being insufficient for that purpose. I feel bound to assume that the plaintiffs were interested in there being a sufficiency of assets. If, therefore, there had been a breach of trust which might have had the effect of reducing the assets, the plaintiffs are entitled to come to the Court to challenge that breach of trust and to ask that any conveyance in breach of trust should be set aside.

In the course of the hearing Mr. Zehnder admitted that, if a trustee sells trust property to himself, such a sale must be set aside. But this he said, is a different case, the trustee is not selling trust property to himself, he is selling it to the trustees of another estate, who happened to be himself and another person. Mr. Goho, for the plaintiffs, cited numerous authorities, but none of them cover the